IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIUR BENCH, JAIPUR.

S.B.Civil Writ Petition No.5569/2002.

Harbans.

Vs.

The Board of Revenue, Rajasthan, Ajmer.

Date of Order: 11.1.2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ.

Mr.N.C.Chaudhary for the petitioner.

This writ petition has been filed by petitioner Harbans S/O.Satya Narayan against the orders passed by Board of Revenue dated 30.7.2002 & 24.7.2002, order dated 20.2.2002 passed by Revenue Appellate Authority and order dated 26.6.2002 passed by the Collector, Baran.

Assistant Conservator of Forest Baran on report of the Regional Forest Officer passed an order dated 2.9.2000 under Section 91 of the Rajasthan Land Revenue Act 1956 for ejectment of the petitioner from the forest land and for imposing penalty of Rs.4000, which was fifty times the normal amount of land revenue of Rs.80/- and sentencing him to undergo 15

days civil imprisonment. Feeling aggrieved thereby, the petitioner filed an appeal under Section 75 of the Rajasthan Land Revenue Act 1956 before the Collector,Baran. The learned Collector vide his order dated 26.6.2001,while dismissing the appeal enhanced the sentence awarded from 15 days to 60 days and upheld the penalty of Rs.4000/-. The Collector in his order dated 26.6.2001 found that the Assistant Conservator of Forest on the report of Regional Forest Officer Kelwara, the petitioner encroached upon the forest land of Gram Pahadi of Kha.No.330 & 323 measuring 40 Bhiga. In the past also he had encroached upon this very land, therefore, he was habitual in encroaching the forest land. It was therefore, the District Collector enhanced penalty of civil imprisonment from 15 days to 60 days.

The petitioner filed further appeal before the Revenue Appellate Authority. The learned Revenue Appellate Authority by it's order dated 20.2.2002 taking note of the fact that the petitioner had repeated the encroachment despite his ejectment once was rightly awarded the penalty and therefore, while upholding the penalty partly allowed the appeal in regard to civil imprisonment by reducing imprisonment

of 60 days again to only 15 days provided the petitioner

removes the encroachment and files an affidavit undertaking not to indulge in encroachment of the land in question again either himself or through any of his agent or family member. A further condition was imposed that if the petitioner failed to comply with all the conditions of this order within 2 months, and file compliance report, the order of the Collector would stand restored.

It is not dispute that the petitioner failed to comply with the condition imposed upon him in the aforesaid order within two months in as much as he did not submit affidavit after having removed the encroachment and deposited the amount of penalty within the prescribed time of two months as directed by the Revenue Appellate Authority. This has the effect of reviving the order of the Collector. In these circumstances, when the petitioner filed a further revision petition before the Board of Revenue. The Board of Revenue by its judgment dated 3.7.2002 rejected the revision petition. The petitioner again filed a review petition against the order dated 3.7.2002, before the Board of Revenue

which was also dismissed by the Board of Revenue vide its order dated 24 July,2002.

The petitioner has now filed the present writ petition with the prayer that all these orders be quashed and set-aside.

I have heard Mr.Vijay Chaudhary learned counsel for the petitioner and Shri B.S.Chhaba Dy.Government Advocate.

Shri Vijay Chaudhary while referring to the order dated 3.7.2002 passed by the learned counsel for the petitioner Board of Revenue has argued that the Revenue Appellate Authority had taken lenient view and while partly allowing the appeal, reduced the civil imprisonment from 60 days to 15 days on the condition that the petitioner would remove encroachment within that time and deposit the amount of fine and shall file an affidavit to this effect.

Even through the affidavit could not be filed within 60 days but the fact is that the petitioner had removed encroachment from the forest land within 60 days as directed by Revenue Appellate Authority and deposited the amount of penalty. He has referred to

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the certificate dated 9.7.2002,issued by Regional Forest Officer, Kelwara, which is available on record as Annexure-7 to the writ petition certifying that the petitioner has removed

the encroachment. He submitted that mere non filing of affidavit within 60 days as required by the Revenue Appellate Authority cannot be by itself taken as such a serious lapse on the part of the petitioner, so as to result in the sufferance of undergoing civil imprisonment of 60 days in place of 15 days. The petitioner had now undertaken not to repeat such encroachment on government land and has also deposited amount of penalty. It is therefore, submitted that this court should take a lenient view of the the matter and remit the penalty of civil imprisonment for 60 days to the amount of fine already imposed.

On the other hand, Shri B.S.Chhaba learned Deputy Government Advocate submits that no proof of the fact that the petitioner had already removed encroachment within 60 days as directed by the Revenue Appellate Authority has been brought on record. The basic order dated 2.9.2000 was passed by the Assistant Conservator of Forest in exercise of

Section 91 (1) of the Rajasthan Land Revenue Act 1956. And the order passed by Collector on 26.3.2003 would clearly show that the petitioner from the date of original order of penalty, continued to remain in possession of the forest land encroached upon by him. On the question of certificate issued by Regional

Forest Officer, Kelwara, the said certificate was issued only on 9.7.2002 but there is no specific date mentioned therein as to when encroachment was removed by the petitioner and the period of 60 days as per order of the appellate authority would not exceed beyond 20.4.2002. Taking into consideration this aspect, it would be evident that the petitioner removed the encroachment much after the expiry of the aforesaid 60 days. The learned Board of Revenue has therefore, rightly dismissed the revision petition. It is argued that the petitioner being a habitual offender, he has been continuously encroaching the government forest land. Section 91(2) is meant to be applied to the cases involving the unauthorized occupation of the government so as to discourage the illegal trespass over the government land and thus making guilty of such encroachment who repeats the offence liable to suffer penalty of civil imprisonment and also fine. The monetary penalty

therein was to be, therefore, always accompanied by certain period of civil encroachment also. Therefore, according to learned Deputy Government Advocate, the amount of monetary penalty alone cannot be sufficient penalty in compliance with sub section (2)of Section 91. He therefore, argued that by merely enhancing monetary the petitioner can escape civil imprisonment of 60 days.

Shri Vijay Chaudhary learned counsel for the petitioner rejoined and argued that the original award of penalty passed by the Assistant Conservator of Forest was itself 15 days. This could not be enhanced to 60 days by Revenue Appellate Authority as no appeal there against was filed by the Government. He argued that in fact, the original order was passed on 2.9.200 and now a long period of almost seven years have gone by since then. This would be too harsh on the petitioner to require him to suffer civil imprisonment of 60 days. It was further argued that since there was no appeal against the order on the question of sufficiency or quantum of penalty, the Collector or Revenue Appellate Authority and the Board of Revenue at their own could not have enhanced

the period of civil imprisonment from 15 days to 60 days.

I have given my thoughtful consideration to the rival submissions made the learned counsel for the parties and perused the material available on record.

Some facts which have got crystallized from the orders passed by the authorities below need to be noticed first.

A finding has come to be recorded against the petitioner that he encroached upon the very same forest land wherefrom he had to be ejected by order dated 9.12.1999 passed under section 91 of the Rajasthan Land Revenue Act. The petitioner thereafter again encroached upon the same forest land. The Assistant Conservator of Forest Kelwara on receiving the report that the petitioner has again encroached upon forest land while directing his ejectment sentenced him to 15 days civil imprisonment and penalty of Rs.4,000/-. The petitioner did not comply with the order not only till his appeal was dismissed by Collector on 26 June 2001 but also till his second appeal was rejected by Revenue Appellate

Authority vide order dated 20.2.2002. This is also apparent from the facts that no such compliance was made even up to the last date of period of 60 days as provided for by order of Revenue Appellate Authority as a condition for reduction of the penalty of civil imprisonment from 60 days to 15 days. Annexure-7 certificate produced by the petitioner does not specify as to on which date the encroachment was removed by the petitioner. This clearly shows that the encroachment was removed sometime after expiry of said limit of 60 days but prior to filing of the revision petition before the Board of

Revenue. The petitioner filed a certificate obtained from the forest department before the Board of Revenue before the Board of Revenue that he has removed the encroachment and deposited the amount of penalty awarded. On a perusal of the aforesaid certificate it does not become clear as to on what date encroachment was removed and amount of penalty was deposited. This will show that the encroachment was removed by the petitioner subsequent to the period of 6 days and fine of Rs.4000/- also deposited thereafter. This certainly reflects an attitude of defiance on the part of the petitioner. Sub-section (2) of Section 91 of the Rajasthan Land Revenue Act

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1956 makes a distinction between those who repeat the act of encroachment at subsequent point of time and who have encroached upon the government land for the first time. Sub-section 2 of Section 91 the aforesaid Act reads as under:-

> “(2) Such trespasser shall further be liable to pay, for each agricultural year during the whole or any part whereof he has been in such unauthorized occupation of the land, a penalty which may extend to fifty times the annual rent, or assessment, as the case may be, for the first act of trespass. In the case of each subsequent act of trespass, he shall, by the order of the Tehsildar, be liable to commitment to civil prison for a term which may extend to three months and to pay penalty to the extent as aforesaid. The amount of such penalty shall be recovered as an arrear of land revenue”

A perusal of sub-section (2) of Section 91 would make it clear that a trespasser shall be liable to pay for agricultural year during the whole or any part whereof he has been in unauthorised occupation of the land, a penalty which may extend to fifty times the annual rent or assessment, as the case may be for the first act of trespass. It further provides that in each subsequent act of trespass, he shall, by the order of the Tehsildar, be liable to

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commitment to civil prison for a term which may extend to three months and to pay penalty to the extent as aforesaid. The amount of such penalty shall be recovered as arrear of land revenue.

The amount of fine which has been deposited by the petitioner represent the penalty which may extend to fifty times the annual rent, therefore, the question of penalty for offence of repeating trespass shall have to be considered independent of that which is, the penalty of 15 days civil imprisonment which was originally imposed by Assistant Conservator and was enhanced by Collector for 60 days. Sub-Section (2) of Section 91 further provides that in subsequent act of trespass, such trespasser is liable to commitment to civil prison for a term which may extend to three months in addition to penalty as aforesaid. Though the maximum penalty

has been prescribed as period of 3 months, if and when a tress passer is proved to have repeated encroachment upon a government land. The petitioner having repeated the act of trespass he cannot be let off only with the payment of penalty for the period of civil imprisonment. But the fact is that the order

passed by the Assistant Conservator of Forest awarding penalty of civil imprisonment for 15 days

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was not challenged before the Collector on the quantum of penalty and the Collector suo-motu enhanced the civil imprisonment from 15 days to 60 days and Revenue Appellate Authority, again reduced it to 15 days subject although to fulfillment of certain conditions. The petitioner having not complied with these conditions, the penalty of 60 days has been revived Period of penalty of 15 days, in my considered view, could not be enhanced to 60 days since no appeal was filed against the order of Assistant Conservator of Forest on the question of quantum of sentence without there being an appeal on such question, the District Collector on his own could not have enhanced civil imprisonment of 15 days awarded by the Assistant Conservator of Forest to 60 days and to that extent, the order of the District Collector can not be sustained.

Coming now to the argument that the petitioner should not

be required to now go behind the bars to suffer civil imprisonment for a period of `15 days, merely because the period of almost seven years has gone by since the original order was passed. I find

that the legislature in sub-section (2) of Section 91 has deliberately dealt with those who have repeat the act of trespass in a different manner than those who

makes trespass first time. The term civil imprisonment may extend three months and penalty may also imposed and therefore, in all cases where it is proved the act of trespass has been repeated and on that basis the penalty has to be awarded, it cannot be but penalty of civil imprisonment accompanied by monetary penalty which can be awarded as punishment. This so because legislature intended the said provision to act as a deterrence and therefore provided for severe penalty.

Under these circumstances, I find requiring the petitioner to undergo civil imprisonment of 15 days at this stage would be too harsh, therefore, while enhancing the quantum of penalty to Rs.25000/- I remit the period of civil imprisonment of 15 days to only 3 days. In the event of the petitioner's failure to pay enhanced penalty, he shall be liable to undergo civil imprisonment of 15 days only.

The writ petition is thus partly allowed as indicated

above, with no order as to costs.

(**Mohammad Rafiq)J**.

Kuttan.